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WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE  
JUDICIARY COMMITTEE OF THE GENERAL ASSEMBLY REGARDING AN ACT  
CONCERNING ADOPTION OF THE UNIFORM REAL PROPERTY TRANSFER ON  
DEATH ACT, RAISED BILL NUMBER 117

Dear Honorable Committee Members:

My name is Attorney Barry Horowitz, I am a member of the Connecticut Bar Association Estate Planning and Probate Section, Elder Law Section, Professional Ethics Committee, and a founding member of the Hartford law firm of Nirenstein, Horowitz & Associates, a law firm that practices exclusively estate planning law. I am writing to express my concerns regarding An Act Concerning Adoption of The Uniform Real Property Transfer on Death Act, Raised Bill No 117 (hereinafter referred to as the "Act")

The Act is an attempt to provide a simplified national unified procedure to transfer real estate upon death without probate, by allowing a deed to be prepared with a death beneficiary instead of a transfer by will.

This informal procedure is very controversial, as it avoids the protection of the probate courts without even the formality of a trust agreement or a conveyance form with normal deed formalities. To date, after 7 years of debate, only 13 states have enacted it; no Northeast state has enacted it. None of the states that we normally look to for guidance have chosen to enact it. The Estate Planning and Probate Section of the Bar only became aware of this Bill a couple days ago. Our Uniform Laws Subcommittee has not had time to review the legislation and consider to what extent it may interfere with Connecticut law.

Issues that I believe need to be considered are as follows:

Antilapse

- . Revocation upon Divorce
- . Homicide
- . Simultaneous Death provisions
- . Potential for Elder Abuse
- . Effect on Estate Tax Reporting
- . Conveyance of title issues
- . Lack of Will formalities
- . Lack of Deed formalities
- . Capacity
- . Spousal Elective Share
- . Recording Requirements
- . Interaction with Anti-nuptial Agreements

There are also specific aspects of the Act that are immediately troubling.

- . The Act mentions "tenant by the entirety". See section 2(3). Tenancy by the Entirety does not exist in Connecticut.

- . Section 7 states that the transfer is "nontestamentary". A transfer taking effect on death under Connecticut law is testamentary.

- . Capacity is that required to make a will, which is a lower standard than other forms of conveyance and lower than applied to deeds, yet this transfer is by deed and is without the protection of the transferor of will formalities. Section 8.

- . If one of two transferees dies, the entire property goes to the other transferee, regardless of the wishes of the transferor. Section 13(4).

The Act makes these deeds subject to the spousal elective share even though the transfer is outside the probate process, but under Connecticut law transfers outside the probate process are not subject to the spousal elective share. Section 15.

- . The preprinted forms do not comply with our statute of deeds.

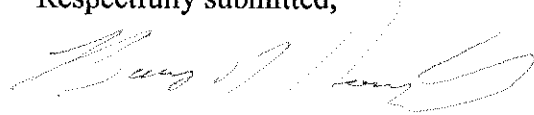
- . The use of preprinted forms without even deed formalities makes it far too easy for an aggressive heir to pressure an elder to transfer the property to him or her, without the transfer even being witnessed. Claims of undue influence on the part of an heir are already common. This Act has the potential of making such claims far more common and may just end up being a "make work" bill for attorneys.

Furthermore, Connecticut already has life estate deeds, inter vivos trusts and joint tenancy deeds that provide for a real estate transfer without going through the probate process. These procedures work well and have been time tested.

For all these reasons, at this time the portion of Raised Bill No. 117, entitled the Uniform Real Property Transfer on Death Act should not be allowed to leave the Judiciary Committee. The

Bar Association sections on Estate Planning and Probate, Elder Law Real Estate Law and Family Law; as well as the Probate Assembly; the Connecticut Bankers Association; Consumer Protection and the Attorney General should be given an opportunity to comment, amend and be part of the process. Only then should this section of Connecticut Law be so dramatically altered.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barry D. Horowitz", written in dark ink.

Barry D. Horowitz, JD, LLM